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SECOND SESSION

Friday, April 28, 1916, 10 o'clock a.m.

The meeting was called to order by Mr. JAMES BROWN SCOTT, Recording Secretary of the Society.

Mr. SCOTT. Gentlemen, I regret to inform you that Mr. Root will be unable to preside this morning and, therefore, I am taking the liberty as Recording Secretary of the Society to open the meeting. I shall ask Professor George G. Wilson, a member of the Executive Council, to act as chairman of the meeting. He has asked me to read the two rules of the Society regarding the time to be allowed the speakers. They are as follows:

Principal papers and addresses may not exceed twenty minutes in delivery, and informal papers or discussions may not exceed ten minutes for each speaker.—Resolution of the Executive Council, April 30, 1910.

The presiding officer is required to call for the next speaker at the expiration of the time allotted.—Resolution of the Executive Council, December 30, 1915.

The Chairman has asked me to make the announcement that these two rules will be rigorously enforced.

The CHAIRMAN. Gentlemen, the subject of discussion this morning is the relation of the exportation of arms and munitions of war to the rights and obligations of neutrals, a subject which has received some consideration from various points of view in the United States during the last several months.

The first speaker is Dr. James W. Garner, Professor of Political Science in the University of Illinois.

SOME TRUE AND FALSE CONCEPTIONS REGARDING THE DUTY OF NEUTRALS IN RESPECT TO THE SALE AND EXPORTATION OF ARMS AND MUNITIONS TO BEL- LIGERENTS.

ADDRESS OF JAMES W. GARNER,

Professor of Political Science in the University of Illinois

To impeach successfully the expediency or morality of a rule of international law which has been approved by the vast majority of

text writers and jurists from Gentilis to the present, which has been observed in practice by nearly all states during the wars of the past, and which has recently been sanctioned by an international convention ratified by all the states of the world, with a few unimportant exceptions, is certainly not an easy task. Apparently the only text writers of repute who have attacked the existing rule, either upon grounds of morality or of policy, are Woolsey¹ and Field,² in the United States; Phillimore,³ in England; Hautefeuille,⁴ Pistoye, and Duverdy,⁵ in France; Kleen,⁶ of Sweden; Gessner,⁷ of Germany; and Brusa,⁸ of Italy. With the exception of Kleen and Brusa, all of them, it may be added, are found in the category of the older writers.

A few writers, of whom Bluntschli is the best known, have undertaken to draw a distinction between the sale and exportation of arms and munitions in small quantities and traffic on an extensive scale (*Zwischen sendungen im Grossen und Kleinen*), the former of which they regard as unobjectionable, but the latter of which it is the duty of neutral governments to prevent.⁹ This distinction is also made in the German war manual (*Kriegsbrauch im Landkreige*).¹⁰ But it is not founded on any sound principle, and in practice it would be difficult if not impossible to apply it.¹¹

No writers, it may be added, have defended the existing rule more vigorously than those of Germany. Geffcken, one of the most distinguished of the German authorities, has considered the traffic in

¹International Law, p. 320.

²Outlines of an International Code, sec. 946.

³International Law, Vol. III, sec. 230.

⁴*Droits et Devoirs des nations neutres en Temps de Guerre*, tome II, p. 424.

⁵*Traité des Prises Maritimes*, t. I, p. 394.

⁶*Lois et usages de la neutralité*, t. I, sec. 93, also his *Contrebande de Guerre*, pp. 52, 67.

⁷*Le Droit des Neutres* (Fr. trans.), p. 126.

⁸Quoted by von Bar in the *Revue de Droit International*, Vol. XXVI (1894), p. 404.

⁹*Droit International Codifié* (Ed. by Lardy), sec. 766.

¹⁰Part III, sec. 3, par. b.

¹¹This has been shown by many writers, for example, by Geffcken, in Holtzendorff's *Handbuch des Völkerrechts*, Bd. IV, p. 690; von Bar, *Revue de Droit International*, Vol. 26, p. 401; Lawrence, *Principles*, p. 699; Oppenheim, *Int. Law*, Vol. II, p. 377; and Snow, *International Law*, p. 134.

arms and munitions at length and has pronounced the opinion that not only are neutral governments not bound to prohibit such trade, but that the attempt to do so would entail upon them impossible responsibilities.¹² Professor von Bar of Göttingen, an equally distinguished German jurist, has pronounced one of the strongest arguments in favor of the right of neutrals to sell and export munitions of war to belligerents to be found in the whole literature of international law. The prohibition of trade in contraband goods, he says, "would injure incalculably not only the commerce of neutrals, but even their manufacturing industry, and in a large measure the production of their agriculture, forests, and mines, reduce a considerable part of their population to starvation," and necessitate a system of surveillance and control by neutrals over the sale and transportation of merchandise which would be intolerable "If two states go to war with each other," he says, "the world is not bound to suspend its customary pursuits in order to prevent one of the belligerents from deriving an advantage or suffering a disadvantage in consequence of such trade. To hold the contrary is to assume that belligerents, as such, have a right to dominate the rest of the world. What a belligerent has a right to expect is only that the relations between his adversary and neutral states shall remain as they were before the war; consequently, the subjects of neutral states may continue to maintain commercial relations as formerly, and if they manufacture arms and munitions and have, before the war, sold them to everybody, they may continue to do so after the outbreak of war, even to belligerents." Moreover, he says, there is nothing morally reprehensible in such business.¹³ An examination of the treatises of a large number of German writers reveals the fact that Gessner is the only one of repute who denies the wisdom of the existing rule.¹⁴

The practice of states, as I have said, has uniformly been in accordance with the view of the jurists, which recognizes an entire consistency between the sale of arms to belligerents and the obligations of neutrality. The Government of the United States has on several well-known occasions prohibited generally the exportation of

¹²*Der Handel mit Waffen und Kriegsmaterial*, in Holtzendorff's *Handbuch*, Bd. IV, sec. 152.

¹³See his article entitled *Observations sur le contrebande de guerre* in the *Revue de Droit International et de Législation comparée*, Vol. XXVI (1894), pp. 401 ff.

¹⁴*Le Droit des Neutres sur mer* (French trans.), p. 126.

arms and munitions as a measure of conservation when it was itself a belligerent, or the exportation to neighboring Latin American countries not as a neutrality measure, but for purposes of pacification or in pursuance of a policy founded upon the existence of peculiar and long-recognized relations between the United States and the neighboring republics of Latin America. The few instances of prohibitions laid by Great Britain have been the result of treaty stipulations, as in the case of the embargo of 1822, at the outbreak of the war between Spain and her South American colonies, and that of 1848, at the beginning of the war between Denmark and Prussia; or they were resorted to when Great Britain was herself a belligerent, as during the Crimean War and the present war, for the purpose of conserving her own supply of munitions.¹⁵ German practice has been substantially the same. Apparently the only instance of a German embargo is to be found in two decrees of the Prussian Government issued in 1854 and 1855, prohibiting the transit through Prussian territory of arms and other contraband from Belgium to Russia; but it appears that little effort was made to enforce either decree, and when the British Government called the attention of the Prussian Government to the matter it replied that the Government was not justified in interfering with the course of trade.¹⁶

The recent assertion that Germany prohibited the sale and exportation of arms to Spain during the Spanish-American War, like many

¹⁵In a recent petition addressed to the President and Congress alleged to have been signed by 1,000,000 American citizens, the statement was made that "on April 23, 1898, after the Spanish-American War had begun the British Government placed an embargo on munitions of war." This statement, like many others made by the embargo propagandists in this country, is not true. The Queen's neutrality proclamation of April 23, 1898, merely warned British subjects that if any of them committed certain acts, among which was the carrying of arms and munitions to either belligerent, their ships and goods would be liable to capture and confiscation. See the text in *Proclamations and Decrees of Neutrality in the War with Spain*, p. 35. The British proclamation did not prohibit such trade, and no penalties were prescribed for engaging in it. In fact, military supplies were purchased in Great Britain by both belligerents. Indeed, the English colony of Jamaica is said to have become the chief source of supply for the Spanish army in Cuba, and except for a mild protest from the American consul at Kingston, no complaint was made by the American Government. Benton, *International Law and Diplomacy of the Spanish-American War*, pp. 195-196.

¹⁶See Earl Granville's note of September 15, 1870, to Count Bernstorff, *British and Foreign State Papers*, Vol. 61, p. 761. "During the whole of the Crimean War," says Earl Granville, "arms and other contraband were copiously supplied to Russia by the states of the Zollverein; regular agents for traffic were established at Berlin, Magdeburg, Thorn, Königsberg, Posen, Bromberg, and other places and no restraint was put upon their operations."

others made by German propagandists in this country, is without foundation. In fact, during the entire war arms and munitions were freely carried from German ports to both Spain and the United States.¹⁷

There have, of course, been a few instances of embargoes laid on grounds of neutrality. During the Franco-German War the Governments of Belgium, Switzerland, Austria-Hungary, Denmark, Spain, Italy, The Netherlands, and Japan, prohibited the exportation of arms and munitions to both belligerents.¹⁸ During the Spanish-American War the Governments of Brazil, Portugal, and Denmark, forbade the transportation of war material to either belligerent, although the Danish proclamation did not prohibit the sale of such articles.¹⁹ The Government of the Dutch colony of Curaçao, under instructions from the Government of The Netherlands, published a decree forbidding the exportation of arms and munitions and other war material to either belligerent.²⁰

Upon the outbreak of the present war the Brazilian neutrality regulations, Article 4 of which "absolutely forbids" the export of arms and munitions to any belligerent port, were put into effect.²¹ Embargoes were also laid by various neutral states of Europe, notably Denmark, Norway, Sweden, Spain, and The Netherlands. The latter have, however, been erroneously regarded as neutrality measures. In fact they were laid partly under pressure from Great Britain as a means of protecting their oversea commerce against the measures adopted by Great Britain against the transit and reexportation to Ger-

¹⁷See a letter of Andrew D. White, American Ambassador to Spain in 1898, to W. B. Blake, dated October 6, 1915, printed in the *New York Times* of January 29, 1916, and in the *Fatherland* of February 9, 1916. See also extracts from the diplomatic correspondence relating to the matter, in an article by W. C. Dennis, Esq., in the *Annals* of the American Academy of Political and Social Science, July, 1915, pp. 13-14, and the official statement of the Secretary of State published in the daily press of April 23, 1915.

¹⁸Bluntschli, *op. cit.*, sec. 766, and Rivier, *Droit des Gens*, Vol. II. p. 412. Rivier says all the states above mentioned issued such proclamations, but Kleen does not include Austria-Hungary, Denmark, Spain, Italy, or The Netherlands in the list which he gives. *Lois et usages*, I, 382, and *Contrebande de Guerre*, pp. 52, 68. Bonfils, secs. 1472 and 1474, mentions only Belgium, Switzerland, and The Netherlands.

¹⁹Proclamations and Decrees During the War With Spain, pp. 13, 22, 61.

²⁰*Ibid.*, p. 27.

²¹See an article by Señor Da Gama, Brazilian Ambassador to the United States, in the *Annals* of the American Academy of Political and Social Science, July, 1915, pp. 147 ff.

many of contraband goods imported from abroad,²² and partly with a view to conserving their own supply of arms and munitions for national defense in case they were subsequently forced into the war.²³ These measures, therefore, can hardly be relied upon as precedents in support of an argument for changing the general practice.

But it does not necessarily follow that because the weight of academic authority and the practice have been in favor of a particular rule, that changed conditions may not make its alteration or entire abandonment desirable. Thus the German memorandum of April 4, 1915, addressed to the Secretary of State, asserted that the situation in the present war differs from that of any previous war, and therefore any argument based on the conduct of states in the past is not conclusive. In the present war, it was pointed out, the United States is practically the only neutral nation of importance from which war supplies in considerable quantities can be obtained by belligerents. In consequence, a new and vast industry for the manufacture of arms and munitions has sprung into existence, an industry which, in the language of the Austro-Hungarian note of June 29, 1915, has "soared to unimagined heights." Thus it has come to pass that the United States has been transformed into a "veritable arsenal" exclusively for the supply of one belligerent and its allies. The rule of international law which relieves neutral governments from the obligation of prohibiting the sale and exportation of contraband originated, the German memorandum contended, in the necessity of protecting their *existing* industries and could not have been intended to afford protection to *new* industries called into existence in consequence of war. It is submitted, however, that the distinction between the sale of arms and munitions of war produced by establishments already in existence at the outbreak of war and the sale of those produced by newly created industries is not a sound principle for distinguishing between neutral and unneutral conduct. In effect the distinction is similar to that made by Bluntschli and the German General Staff in the *Kriegsbrauch im Landkriege* between sales in large quantities and sales in

²²See my article on Contraband, Right of Search and Continuous Voyage in the American Journal of International Law, April, 1915, p. 393.

²³Compare the remarks of Professor J. B. Moore before the American Academy of Political and Social Science, Annals, July, 1915, p. 146, and the remarks of W. C. Dennis, Esq., *ibid.*, p. 178. In the German memorandum of April 4, 1915, it is virtually admitted that the embargoes laid by the neutral Powers of Europe were measures unconnected with neutrality but were rendered necessary by the duty of "perfecting their own armaments."

small quantities. Like most quantitative distinctions, it rests upon no logical principle, and the attempt to apply a rule based on such a distinction would in practice lead to insuperable difficulties, as the German writers Geffcken and von Bar, as well as many others in England and America, have pointed out. Nor can it be admitted that the conception of neutrality is given a "new aspect" by the fact that the markets of a single neutral state have become the chief if not the sole source of the foreign supply of one or more belligerents. To assert such a view is to maintain that the sale of munitions by the citizens of one state is legitimate so long as the markets of other states may be drawn upon, but that it ceases to be consistent with the spirit of neutrality the moment the number of such states is reduced to one. Again it is submitted that such a distinction can have no place in determining the rules of neutral conduct.

Likewise, the contention recently put forward that since the quantity of arms and munitions sold to belligerents in former wars was comparatively small the practice in those wars can not be regarded as precedents to justify a traffic of such proportions as that which the business has assumed in the present war, ignores the difference between the magnitude of those wars and that of the present conflict. It has been stated by the British Minister of Munitions that less ammunition was used by the British forces during the entire Boer War than was consumed in a single well-known battle during the present war. To hold that it is not unneutral for a state to permit its subjects to furnish arms and munitions to belligerents so long as the magnitude of the war is not such as to require large quantities of such supplies, but that it becomes unneutral when by reason of the widespread character of the war the demand assumes large proportions, is again to introduce a quantitative distinction in the place of a distinction founded on principle. In cases of world-wide wars like the present conflict the recourse to neutral markets will naturally be larger, and it is impossible to fix a point beyond which permission to resort to those markets ceases to be consistent with neutrality, if recourse in any degree is to be recognized as lawful. In short, the measure of neutral conduct in such matters bears no relation to the proportion of supplies furnished and can not be determined on the basis of distinctions in respect to the magnitude of the war and the necessities which it creates.

The theory recently advanced that it is the duty of neutrals to so adjust their policies as to maintain a "parity" with respect to the various

belligerents, *i. e.*, to insure an equalization of advantages as between them all, by refusing to permit the exportation of supplies to one when the fortunes of war have deprived the other of access to neutral markets, is even less defensible. It is believed that no such extraordinary contention was ever seriously put forward by a belligerent in the past. If admitted it would, as Mr. Lansing said in his note of August 12, 1915, "impose upon every neutral nation a duty to sit in judgment on the progress of a war and to restrict its commercial intercourse with a belligerent whose naval successes prevented the neutral from trade with the enemy." Manifestly the effect of such a policy would be not the maintenance of neutrality but partiality.

But apart from special circumstances, it is argued that there are general considerations which make it desirable that the present rule should be altered. The furnishing of arms and munitions to belligerents, it is contended, is contrary not only to the best standards of ethical conduct but to sound principles of national and international policy. Thus, said Senator Works, of California, in a speech in the Senate on January 27, 1916:

I believe the trade to be immoral and demoralizing to the people of the United States. I believe that most of the complications that have grown up between this and foreign nations now at war have been the result of the trade in munitions of war. I believe that if it had not been for the fact that we are dealing in that nefarious trade the people upon the *Lusitania* would not have lost their lives.

We have, in effect, made our country a party to the war across the ocean. It is our ammunition, our shot and shell, that are taking the lives of the citizens and subjects of friendly nations in Europe. We can not justify ourselves in that position or in that trade by saying that it is allowed by the laws of neutrality. There is something higher that should control the people of the United States than the mere strict law of neutrality.²⁴

²⁴Congressional Record, 64th Cong., 1st sess., p. 1797. Compare also the remarks of Senator Kenyon to the same effect, *ibid.*, p. 1793; of Senator LaFollette, *ibid.*, p. 1800; of Senator Ashurst, *ibid.*, p. 1796; of Senator Robinson, *ibid.*, p. 1797; of Representative Ricketts, *ibid.*, pp. 2657-2658; of Senator Hitchcock, *ibid.*, 63rd Cong., 3rd sess., p. 3938; of Representative Porter, *ibid.*, App., pp. 583-585; of Representative Vollmer, *ibid.*, App., pp. 735-736. See also a pamphlet entitled "Private Property and the Nation's Honor," by Aked and Rauschenbuch; Burgess, *The European War*, Ch. VII; an article by von Mach, "The German View Point," *Boston Transcript*, April 14, 1915; and Butte, *Proceedings of the American Society of International Law*, 1915, p. 129.

It is the veriest cant and hypocrisy, we are told, for a nation to pray for peace on Sunday and during the rest of the week devote their energies and resources to the manufacture and sale of the instruments of death with which to perpetuate a struggle in which the blood of thousands is being daily shed. Besides prolonging the duration of the war and swelling the volume of rivers of blood, the effect of such a traffic is to array citizens of a common country against one another, arouse animosities, provoke the enmity of foreign nations, and lay the foundations for future international controversies. Furthermore, it is asked, Why should it be regarded as unneutral for a government to sell arms and munitions to belligerents, but entirely consistent with neutrality for a government to allow its citizens to do so? Why maintain a double standard of conduct: one for the state and the other for the citizens who compose it?

"International law," said Senator Hitchcock in the Senate on February 17, 1915,²⁵ "is entirely out of harmony with the spirit of the age in permitting this traffic—it relates to a time and has its roots in an age when war was the legitimate method of settling disputes."

Time does not permit an extended answer to all these questions, but I venture to offer a few observations on some of them. First of all, it may be repeated that the existing rule has had the support of the almost uninterrupted practice of nations for centuries; it has been approved by all the text writers on international law from Grotius to the present, with scarcely more than a half-dozen notable exceptions, and it was sanctioned as late as 1907 by an international convention which received the almost unanimous approval of the states of the civilized world. The presumption, therefore, must be largely in favor of a rule of international conduct which has been thus approved by jurists, followed in practice by states, and sanctioned by international agreement. If authority, practice and common consent count for anything in determining the general consensus in respect to the value of a rule of conduct, the present practice rests upon solid foundations of morality and public policy, national and international. I venture also to raise the question whether ethically there is any substantial ground for a distinction between the sale of arms and munitions to a belligerent in time of war to be used immediately for killing his enemies, and sales in time of peace for

²⁵Cong. Record, 63rd Cong., 3rd sess., p. 3938.

the purpose of putting him in readiness for killing possible enemies at some future time. If war is admitted to be a legitimate mode of settling international controversies, and Senator Hitchcock, who asserts the contrary opinion, does not tell us when it ceased to be so recognized, it seems difficult to deny the morality of making and selling the instruments by which it is carried on; and if it is not immoral to furnish them before an army takes the field, it is not immoral to do so afterwards.²⁶ Moreover, if it is ethically permissible to furnish a belligerent with cloth for making uniforms, cotton and other material for making explosives, coal for supplying warships, mules for drawing artillery, and other materials without which war can not be carried on, why is it any more reprehensible morally to sell arms and munitions? Ethically there is no sound basis for such a distinction, yet most of the embargo measures recently introduced in Congress proposed to prohibit the sale and exportation of arms and munitions only.

No line of distinction, as the late Professor Westlake once declared, can be drawn between the sale of munitions, on the one hand, and other articles which, though not directly employed for killing men, are essential to belligerents in the carrying on of war. "No principle can turn on the degree of proximity in which its employment contributes to the physical act of killing or wounding."²⁷ If the canons of morality or considerations of neutrality require prohibition of the sale of the one class of articles, they require equally a prohibition of the sale of the other. But if both classes should be prohibited, where is the line between prohibited and innocent goods to be drawn? As Earl Granville pointed out in his note of September 15, 1870, to Count Bernstorff:

in the American Civil War no cargoes would have been more useful to the Southern States than cloth, leather, and quinine. It would be difficult for a neutral, and obviously impossible for a belligerent to draw the line. Moreover, articles invaluable to a belligerent at one time may be valueless to another and *vice versa*. Is the neutral to watch the shifting phases and vary his restrictions in accordance with them?²⁸

²⁶Compare on this point the remarks of Professor T. S. Woolsey, in an article entitled "Case for the Munitions Trade," *Leslie's Weekly*, July 29, 1915.

²⁷Collected Papers of John Westlake, pp. 379-380.

²⁸British and Foreign State Papers, Vol. 61, p. 765.

In view of the source from which the recent attack upon the trade in arms and munitions emanated, it may be interesting to quote the views of a highly respected German jurist and one of the most eminent authorities on international law, Professor von Bar of Göttingen. After dwelling at length upon the serious injuries which an embargo would inflict upon the industries of neutral nations as well as the difficulties which would be encountered in enforcing such a measure, he proceeds to consider the moral aspect of the question. On this point he says:

It is wrong, therefore, to denounce, as has often been done, the sale of arms by neutrals to belligerents, as a business which pollutes the hands and honor of neutral countries. This phrase has no more force than a tirade launched against a fire insurance company, on the ground that it is engaged in a miserable business which draws its profits from the misfortunes of others.

"True progress," von Bar continues, "consists not in prohibiting trade in contraband goods, as Kleen and Brusa would do, but rather in abolishing the right of belligerents to interfere with such trade except through the exercise of the right of blockade. The argument sometimes advanced that the furnishing of arms and munitions to belligerents serves to prolong the duration of wars, and that a trade which draws its profits from bloody battles is condemned by the interests of humanity, von Bar pronounces as specious, and he quotes Lorimer as having pointed out with his usual sagacity that the object of war is not a temporary cessation of hostilities but a durable peace, and it is therefore wrong to force a nation to quit fighting by refusing to sell it the means of carrying on war, for in that case it is not really vanquished, and in a little while the struggle will be renewed."²⁹

One of the most serious practical objections to the proposed change is to be found in the difficulty of enforcing prohibitory measures. Many writers and statesmen have called attention to this difficulty. Earl Granville, in his reply to the remonstrance of Count Bernstorff in 1870, asserted that if the exportation of arms and munitions was prohibited they would be exported clandestinely, to prevent which it would be necessary "to establish an intricate and inquisitorial customs

²⁹These views of von Bar are set forth in an article entitled *Observations sur le Contrebande de Guerre*, published in the *Revue de Droit International et de Législation Comparée*, Vol. XXVI (1894), pp. 401 ff.

system, under which all suspicious packages, no matter what their assumed destination, would be opened and examined." "Moreover," he said. "it would cause infinite delay and obstruction to innocent trade."³⁰

The difficulty of preventing such trade, Earl Granville went on to say, had been abundantly shown during the Crimean War. The Prussian Government had by a decree forbidden the transit through Prussian territory to Russia of arms and munitions, but the customs authorities were powerless to prevent violations of the law. If the Prussian authorities could not prevent such traffic across a land frontier, it would be still more difficult for Great Britain, which has no land frontier, since a ship leaving her ports may go where it pleases.³¹

As Spaight aptly remarks:

If a neutral Power were held responsible for all the commercial transactions of its subjects with belligerents, most of the nations of the world would have to rewrite their constitutions whenever a war began. The outbreak of hostilities between any two states would have the effect of establishing in every country not participating in the war a system of governmental interference with private persons and their business transactions which would only have to be tried once to stand condemned as intolerable and impossible.³²

³⁰British and Foreign State Papers, Vol. 61, p. 764. Compare the following remarks of the late Professor Goldwin Smith in a letter to Professor Max Müller of Oxford: "It would be too much to expect that whenever two nations chose to disturb the peace of the world, all the other nations should be required to prohibit lawful trading, and to turn their governments into detectives armed, as they must be for such a purpose, with arbitrary powers. You can not draw any real distinction between arms and other things needed by belligerents. One belligerent needs rifles, another saddlery, a third cloth for uniforms, a fourth biscuit, a fifth copper or iron." Goldwin Smith's Correspondence, ed. by Haustain, p. 35, quoted in an editorial in the *American Journal of International Law*, October, 1915, p. 930.

³¹Westlake remarks that if the exportation of contraband were prohibited, England would be the country in which with the best intentions and greatest activity on the part of the government, such a rule would be the worst observed and which would suffer most from international difficulties to which the breach of it would give rise. Collected Papers, p. 391. The Zulus, says Spaight (*War Rights on Land*, p. 478), who fought at Islandwana and Rorke's Drift in 1879, were armed with rifles which had been smuggled into Zululand by English traders who knew perfectly well for what purpose the arms were to be used. Spaight also remarks that the sword bayonets for the French *Chassepôts* used in the Franco-German War of 1870, though sold at Birmingham, were first imported from Germany and thus employed to kill Germans.

³²*War Rights on Land*, p. 475.

Geffcken and von Bar have condemned the proposal to prohibit the exportation of arms and munitions largely for this reason. Geffcken³³ remarks that to attempt such a measure would be to impose upon neutrals impossible responsibilities. Von Bar³⁴ says it "would not only injure incalculably the commerce of neutrals," but it would "necessitate a system of surveillance and control over the sale and transportation of merchandise which would be intolerable."³⁵

The obligation to prohibit such traffic being once recognized, legal responsibility for failure to enforce the prohibition follows as a consequence, and the neutral becomes exposed to liability for damages to an injured belligerent for neglect to exercise due diligence. As Lawrence observes, a nation "after having dislocated its commerce and aroused the anger of its trading classes, might possibly find itself arraigned before an international tribunal and cast in damages because a few cargoes had slipped through the cordon it maintained against its own subjects."³⁶ "No chain of mountains, and no coast line," says Lorimer, "has ever been or really could be guarded, and a state which undertook to do it would be exposed to the accusation of having failed in its engagements."³⁷

The practical result of such a policy, therefore, would be to shift the responsibility which now rests upon belligerents themselves of intercepting shipments of contraband destined for the use of the enemy, to the shoulders of the neutral, who would become liable to

³³*Der Handel mit Waffen und Kriegskonterbande*, in Holtzendorff, *Handbuch*, Bd. IV, sec. 152.

³⁴*Observations sur le contrebande de Guerre*, *Revue de Droit International et de Lég. Comp.*, Vol. XXVI (1894), p. 401.

³⁵The proposal to prohibit trade in contraband has also been criticized on the above mentioned grounds by Creasy, *First Platform of International Law*, p. 608; by Calvo, *Droit Int. Pub.*, Vol. V, sec. 2774; by Sir William Vernon Harcourt, *Letters of Historicus*; by Davis, *Elements of International Law*, p. 403; by Lawrence, *Principles*, p. 702 (who remarks that the effective enforcement of such a policy would require an army of spies and informers); and by many jurists at various sessions of the Institute of International Law, notably by Westlake and Lorimer at the meeting of 1875 (*Rev. de Droit International*, Vol. VII, pp. 605, ff) and by General den Beer Portugael and M. Lardy in 1894 (*ibid.*, Vol. XXVI, pp. 323 ff).

³⁶*Principles of International Law*, 4th ed., p. 702.

³⁷*Revue de Droit International*, etc., Vol. VII (1875), p. 609. In this connection it may be remarked that the ground upon which Great Britain remonstrated against the transit of arms through Prussia to Russia during the Crimean War was not that Prussia was bound to prohibit such traffic, but that having issued a decree for that purpose she was bound to enforce it. See Earl Granville's note of September 30, 1870, to Count Bernstorff, *British and Foreign State Papers*, Vol. 61, p. 762.

damages for failure to do it. Instead of removing what is admitted to be one of the chief sources of controversy between belligerents and neutrals, it is believed that such a rule would, by imposing burdensome if not impossible duties upon neutrals, greatly augment the already serious inconveniences to which they are subjected, and lay the foundations for international claims and controversies.³⁸

Finally, another practical objection to a rule of law which would prohibit merchants of neutral states from selling arms, munitions and other war materials to belligerents, and one which has often been pointed out since the beginning of the recent agitation in this country for an embargo on the exportation of such articles, is to be found in the necessity which it would impose upon states which do not maintain large and fully equipped military establishments or which do not possess extensive industries for the manufacture of military armament, of purchasing and storing in time of peace adequate quantities of such supplies or of establishing new industries of their own upon which they could rely. In short, "unprepared" nations like the United States would be compelled to put themselves in a war posture in time of peace, to be in readiness at all times to meet any emergency; otherwise, in the event of attack by a state whose military and naval armaments are kept in a high state of equipment, they would find themselves embarrassed by the lack of arms and munitions and by the means of producing them in sufficient quantities for the purposes of national defense.³⁹ As Westlake has aptly observed, "the manifest tendency of all rules which interfere with a belligerent's power to recruit his resources in the markets of the world is to give the victory in war to the belligerent who is best prepared at the outset; therefore, to make it necessary for states to be in a constant condition of preparation for war: therefore, to make war more probable."⁴⁰

³⁸Compare the remarks of William C. Dennis, Esq., in the *Annals of the American Academy of Political and Social Science*, July, 1915, p. 173.

³⁹This danger is emphasized by Secretary Lansing in his note of June 29, 1915, to the Austro-Hungarian Government.

⁴⁰Collected Papers, pp. 391-392. Compare also the remarks of Wm. C. Dennis, Esq., in the *Annals of the American Academy of Political and Social Science*, July, 1915, p. 175, and a letter of ex-president Taft of January 24, 1916, to E. Von Mach. Dr. C. N. Gregory, in a recent article published in the *Outlook* (1915, p. 520), calls attention to a report that at the outbreak of the present European War an important European Power found on taking account of its stock that it had only six rounds of ammunition per capita for its armed forces. Had it been compelled to enter the war and had it been deprived of purchasing ammunition in foreign markets, its plight would have been pitiable.

The tendency if not the effect of such a rule would be to compel non-military nations which devote their wealth and energies to the peaceful industrial arts, to direct their resources and activities to the manufacture of munitions of war and the upbuilding of military and naval armaments. Such a policy instead of diminishing the eventualities of war would on the contrary probably multiply certain influences which promote wars, unless the manufacture of arms and munitions were made a government monopoly.

The attacks that have recently been made upon the existing rule, so long approved by the jurists and text writers of all countries and so generally followed in practice by states, have, as is well known, been made not in the interest of neutrality but in the interest of a particular belligerent. The purpose of the proposed alteration of the rule was not to maintain equality of treatment to all belligerents, but to nullify the advantage which one of them has won through its superior naval strength. Nowhere has the case against the proposed alteration of the existing rule been more cogently summarized than in Secretary Lansing's note of August 12, 1915, in reply to the Austro-Hungarian protest, where he said:

The principles of international law, the practice of nations, the national safety of the United States and other nations without great military and naval establishments, the prevention of increased armies and navies, the adoption of peaceful methods for the adjustment of international differences, and, finally, neutrality itself are opposed to the prohibition by a neutral nation of the exportation of arms, ammunition or other munitions of war to belligerent Powers, during the progress of the war.

The CHAIRMAN. As several have come in since the opening of the session, I will repeat that the subject for discussion is the relation of the exportation of arms and munitions of war to the rights and obligations of neutrals. As was intimated in Dr. Garner's paper, there is a wide difference of opinion upon the subject. He admitted that there were a million people who had indicated some difference of opinion upon that matter. The discussion will be continued by Dr. Philip Marshall Brown, Professor of International Law and Diplomacy in Princeton University.